

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARINE CREDIT UNION)	
)	Case No. 3:23-cv-497
Plaintiff,)	
)	(formerly Case No.
v.)	2023cv000304 in the Circuit
)	Court for La Crosse County,
JENNIFER HOWE SAULS MCKINNEY,)	Wisconsin)
ISRAEL MCKINNEY, GUNDERSON)	
CLINIC LTD, GUNDERSON LUTHERAN)	
MEDICAL CENTER, LA CROSSE)	
COUNTY CLERK OF CIRCUIT COURT,)	
SCHNEIDER WINDOW COVERING,)	
STATE OF WISCONSIN DEPT OF)	
CHILDREN AND FAMILIES, AND)	
UNITED STATES OF AMERICA.)	
)	
Defendants.)	
_____)	

UNITED STATES' NOTICE OF REMOVAL

The United States hereby removes the above-captioned state court action to this Court pursuant to 28 U.S.C. §§ 1441(a), 1442(a)(1), and 1444.

1. On June 28, 2023, Marine Credit Union filed a Complaint for Mortgage Foreclosure on certain real property owned by Jennifer McKinney and Israel McKinney in the Circuit Court for La Crosse County, Wisconsin. A copy of Plaintiff's Complaint, and other documents that the United States has copies of that may be on file in the state court (which as of today's date, consist only of the summons to the United States and complaint), are attached hereto collectively as Exhibit 1.

2. Plaintiff named the United States¹ a party to its mortgage foreclosure action because the government had filed notices of federal tax liens in LaCrosse County, Wisconsin, which encumbers the real property that is subject of this *in rem* suit. The federal tax liens are associated with the federal income tax liabilities of Jennifer McKinney and Israel McKinney. *See* Ex. 1, Complaint at § 17 and Ex. D thereto (title report listing five notices of federal tax liens.)

3. Because plaintiff filed its *in rem* suit to foreclose its mortgage on property encumbered by a federal tax lien and the suit is against, among other parties, the United States, it falls within the ambit of 28 U.S.C. § 2410(a)(2).

4. Accordingly, the United States may and does properly remove the bank's state court mortgage foreclosure suit to this Court pursuant to 28 U.S.C. §§ 1441(a), 1442, and 1444.

5. Removal here is also timely. A defendant must file a notice of removal within thirty days of service of the initial pleading. *See* 28 U.S.C. § 1446(b). The United States Attorney's Office for the Western District of Wisconsin was served on June 30, 2023; this notice is being filed within 30 days of that date and is timely.

¹ Plaintiff named the "United States -Internal Revenue Service" as a party defendant. But the IRS has no capacity to be sued and the only proper party is the United States. *See In re Pansier*, 451 Fed. Appx. 593, 594 n.1 (7th Cir. 2011) ("The Pansiers named the IRS as defendant, but a lawsuit nominally against the IRS is really a suit against the United States.") (citations omitted); *Freck v. IRS*, 37 F.3d 986, 996 n.1 (3d Cir. 1994); *cf. Blachy v. Butcher*, 221 F.3d 896, 909-10 (6th Cir. 2000) ("Even though the Butcher defendants are correct that the IRS has no capacity to be sued, and that the plaintiffs should have named the United States as a party instead of the IRS, such defects are not fatal.") (citing *Labry v. IRS*, 940 F. Supp. 148, 149 (E.D. La. 1996) ("holding that although the United States rather than the IRS was the proper party, a misnomer does not preclude removal under 28 U.S.C. § 1444"); *Bernard v. IRS*, 1991 WL 327960 (N.D. Fla 1991)).

6. Pursuant to 28 U.S.C. § 1446(d), the United States will serve Plaintiff along with all other parties named in the state court proceeding, with a copy of this notice and will concurrently file a copy of this notice in the Circuit Court for La Crosse, Wisconsin.

WHEREFORE, the United States removes the state suit to this Court and requests that this action be entered upon the docket of this Court in accordance with Rule 81(c) of the Federal Rules of Civil Procedure.

Dated: July 21, 2023

Respectfully submitted,

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/s/ Nathan Baney
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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2023, a true and correct copy of the United States' NOTICE OF REMOVAL, with all attachments, was filed with the Court via its CM/ECF system and that copies of the same were sent via USPS to these recipients:

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/s/ Nathan D. Baney
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